

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
7:12-CR-17-BO

UNITED STATES OF AMERICA

v.

SHERWIN ARCHIE

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**ORDER**

This matter is before the Court on defendant's motion in letter form for copies without cost. [DE 96]. The government has responded, and the matter is ripe for ruling. For the reasons discussed below, defendant's request is denied.

**BACKGROUND**

Defendant pleaded guilty to possession of a firearm by a convicted felon, Hobbs Act robbery, and using a firearm in furtherance of a crime of violence, and was originally sentenced on February 20, 2013, to an aggregate term of 264 months' imprisonment [DE 51], which was affirmed on direct appeal. Though counsel, defendant subsequently filed a 28 U.S.C. § 2255 motion to vacate under *Johnson*, which the Court granted and which resulted in defendant being resentenced on July 20, 2016, to an aggregate term of 117 months' imprisonment. [DE 94].

On April 10, 2017, defendant filed a motion requesting that the July 20, 2016 resentencing hearing be transcribed and a copy provided to him without cost. [DE 96]. Defendant's motion represents that he is indigent and that he "wishes to pursue further post-conviction relief." *Id.*

**DISCUSSION**

28 U.S.C. § 753(f) provides that a transcript may be obtained at government cost if a motion pursuant to 28 U.S.C. § 2255 has been certified as non-frivolous and the transcript is


needed to decide the issue presented by the motion. Further, as indigent defendants have been found not to have a Constitutional right to a transcript in order to assist in filing a § 2255 motion, *United States v. MacCollom*, 426 U.S. 317, 325–26 (1976), “the Fourth Circuit requires indigent defendants to show a ‘particularized need’” for requested documents. *United States v. Holloman*, No. 7:07-CR-8-F, 2013 U.S. Dist. LEXIS 99748, \*4 (E.D.N.C. Jul. 17, 2013); *Jones v. Superintendent, Va. State Farm*, 460 F.2d 150, 152–53 (4th Cir. 1972). An indigent defendant is not entitled to a transcript at government expense in order to “merely [] comb the record in the hope of discovering some flaw.” *United States v. Glass*, 317 F.2d 200, 202 (4th Cir. 1963); *see also United States v. Torres*, No. 94-6586, 1995 WL 123843 (4th Cir. 1995) (“Defendants are not entitled to preparation of a transcript [and other documents] at government expense prior to actually filing a § 2255 motion.”).

Defendant has made no particularized showing of a need for copies of the documents he has requested. Further, defendant has not filed a motion pursuant to § 2255, and thus no frivolity determination has been made. Defendant is entitled seek copies at his own expense, but not at the government’s.

#### CONCLUSION

For the foregoing reasons, defendant’s motion [DE 96] is DENIED.

SO ORDERED, this 6 day of June, 2017.

  
TERRENCE W. BOYLE  
UNITED STATES DISTRICT JUDGE